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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/310,596	05/12/1999	RAFAEL S. LISITSA	777.241US1	9040

23460 7590 04/22/2003

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EXAMINER

VAUGHN JR, WILLIAM C

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 04/22/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

PR4

Office Action Summary

Application No.

09/310,596

Applicant(s)

LISITSA ET AL.

Examiner

William C. Vaughn, Jr.

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-- **Th MAILING DATE of this communication app ars on the cov r sh et with the correspondence address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8, 10-42 and 57-81 is/are allowed.
- 6) ☒ Claim(s) 43-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. This Action is in response to the Amendment and Reply received 11 February 2003.
2. Amendment A, Paper #8, received 11 February 2003 has been entered into record.
3. The application has been examined. **Claims 1-8 and 10-81** are pending. The Examiner also acknowledges the cancellation of **claim 9**. The objections and rejections cited are as stated below:

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
5. Claims 43-56 are rejected under 35.S.C. 101 because the claimed invention is inoperative and therefore lacks utility.
6. Claims 43-56 recite a data structure, which does not provide functionality to obtain any type of recited utility. Additionally, no storage medium has been specified, e.g. embodiment on a computer readable medium. Further any assumed computer readable medium containing the data structure does not fall within one of the five categories of statutory subject matter, namely: new and useful process, machine, manufacture, composition, of matter, or any new and useful improvement thereof. The claims are directed towards a data structure that is non-statutory in nature. See MPEP 2106(IV)(B)(1).

Merely claiming nonfunctional descriptive material stored in a computer readable medium does not make is statutory. Such a result would exalt form over substance. See *In re Sarkar*, 588 F.2d 1330, 1333, 200, USPQ 132, 137 (CCPA 1978). "non" functional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data, i.e.

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data structure, such as the one claimed. Where certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, are merely stored so as to be read or outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer, then such descriptive material alone does no impart functionality either to the data as so structured, or to the computer. See MPEP 2106(IV)(B)(1)(B). The claims recite an intended use "for processing streaming data" in the preamble, which is not evident in the claims. An interrelationship between the claimed data structure and any functional activity is absent in the claimed invention, resulting only in nonfunctional descriptive material. Therefore, claims 43-56 are rejected.

Allowable Subject Matter

7. Interpreted in view of the specification as well as Applicant's arguments (see papers 7 and 8), claim 1 specify *inter alia* a method for processing frames of streaming data through modules in a digital computer, comprising: constructing a graph as a sequence of the modules for accepting and processing the frames of streaming data to achieve desired output data; dividing the graph to define a pipe according to performance parameters for each of the modules and the graph as a whole, wherein the pipe is a connected group of multiple ones of the modules, at least one of the modules being a restructuring module; providing a common memory area accessible to the modules within the pipe for storing streaming data; allocating composite frames in the common memory area, each composite frame having predefined subframes; transporting the streaming data through different ones of the modules in the group in different ones of the subframes; and restructuring the data among at least some of the subframes in the restructuring

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module [Applicant's enabling portions of the specification, pages 14, lines 23-30, page 15, lines 1-26, page 16, lines 1-30, page 17, line 1-25].

8. Claims 1-8, 9-42 and 57-81 are allowed.

Response to Arguments

9. As to the 35 USC 101 rejection. The Applicant states that the amended language overcomes this rejection. It is the position of the Examiner that the amended claim does not overcome the previous 35 USC 101 rejection. The claim language does not state the functionality of processing the modules nor does it state how each field is to be used. Thus, the 35 USC 101 rejection is maintained.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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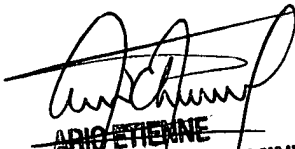
Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Vaughn, Jr. whose telephone number is (703) 306-9129. The examiner can normally be reached on 8:00-5:00, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on (703) 305-9703. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9700.

WCV

WCV
Patent Examiner
Art Unit 2142
April 21, 2003


ARIS ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100